IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,487

CHARLES HENRY WILLIAMS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

* *

ON DISCRETIONARY REVIEW FROM THE
THIRD DISTRICT COURT OF APPEAL

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RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

The Respondent rejects Petitioner's Statement of the Case and Facts because it almost exclusively consists of facts which are not contained within the four corners of the decision below. See Reaves v. State, 485 So.2d 829 (Fla. 1986). In accordance with Reaves, the facts relevant to this proceeding are as follows:[1]

After engaging the victim in conversation about where to purchase cocaine, Petitioner struck the victim in the head, choked her from behind, and put a sharp object to her neck. Petitioner then dragged the victim to a secluded area where he threw her to the ground, took the victim's cocaine, and then raped her. (A. 2.)

After his arrest, Petitioner admitted having sex with the victim, but claimed that it had been consensual. At trial, the State introduced testimony of two other women who testified that they had also been raped by Petitioner in the same manner as the victim: engaging them in conversation about cocaine, grabbing them in a tight chokehold from behind, removing them to a secluded spot, taking their cocaine, and then raping them. (A. 2.)

The Court held that the evidence that the two other women had been raped by Petitioner in the same manner as the victim was properly admitted in accordance with Williams v. State, 110 So.2d 654 (Fla.), cert. denied, 361 U.S. 847, 80 S.Ct. 102, 4 L.Ed.2d 86 (1959), which also involved a sexual battery case where consent was a defense, but which nevertheless upheld the admission of a collateral crime victim's testimony

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[1] The symbol "A" will be used to designate the appendix consisting of the district court's opinion, which is attached to Petitioner's brief.

to show plan, course of conduct, or common scheme. (A. 3.) The Petitioner's convictions for sexual battery, kidnapping, robbery and possession of cocaine were therefore affirmed. (A. 1, 3.)

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH HODGES V. STATE, 403 So.2d 1375 (Fla. 5th DCA 1981) rev. denied, 413 So.2d 877 (Fla. 1982); OR HELTON V. STATE, 365 So.2d 1101 (Fla. 1st DCA), rev. denied, 373 So.2d 461 (1979)?

SUMMARY OF ARGUMENT

The collateral crime victims in this case were raped in the same manner as the charged victim. Their testimony was therefore properly admitted to show that the Petitioner engaged in a plan, course of conduct or common scheme, even though the Petitioner claimed that he had consensual sex with the charged victim. This holding by the Third District Court of Appeal is entirely consistent with this Court's holding in Williams v. State, 110 So.2d 654 (Fla.), cert. denied, 361 U.S. 847, 80 S.Ct. 102, 4 L.Ed.2d 86 (1959). The decision in this case does not conflict with Hodges v. State, 403 So.2d 1375 (Fla. 5th DCA 1981), rev. denied, 413 So.2d 877 (1982), or Helton v. State, 365 So.2d 1101 (Fla. 1st DCA), cert. denied, 373 So.2d 461 (1979), since in those cases there was insufficient similarity between the charged and collateral crime to establish a plan, course of conduct or common scheme.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THE PRESENT CASE DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH HODGES V. STATE, 403 So.2d 1375 (Fla. 5th DCA 1981) rev. denied, 413 So.2d 877 (Fla. 1982); OR HELTON V. STATE, 365 So.2d 1101 (Fla. 1st DCA), rev. denied, 373 So.2d 461 (1979).

Under the 1980 amendment to Article V, Section 3(b)(3) of the Florida Constitution, "this Court may only review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law." Jenkins v. State, 385 So.2d 1356 (Fla. 1980). Such a conflict does not exist in this case.

The instant case and Hodges and Helton are significantly different. In the case at bar, the charged victim and collateral crime victims were raped by Petitioner in the same manner: "engaging them in conversation about cocaine, grabbing them in a tight chokehold from behind, removing them to a secluded spot, taking their cocaine, and then raping them." (A. 2.) In contrast, in both Hodges and Helton, there is no indication that the charged and collateral crimes were particularly similar. Indeed, the facts, as briefly described in Hodges and Helton, reveal only general similarities and significant dissimilarities.

In Hodges and Helton, the Courts held that the collateral crime evidence was irrelevant to the issue of consent or any other issue. However, these cases cannot be read as holding that evidence of a collateral sexual battery can never be admitted in a sexual battery case in which identity is not an issue since a consent defense is raised. As the Court in the present case recognized, this Court's landmark decision in

Williams v. State, 110 So.2d 654 (Fla.), cert. denied, 361 U.S. 847, 80 S.Ct. 102, 4 L.Ed.2d 86 (1959), upheld the admission of evidence of a collateral crime in a sexual battery case, where consent was the sole defense. This Court in Williams concluded that the similarity between the two crimes showed a plan, scheme or design and was relevant to meet the anticipated defense of consent. Petitioner's argument for conflict should be rejected because it is dependent upon a conclusion that the Hodges and Helton Courts expressed a conclusion that conflicts with this Court's binding decision in Williams.

Also supporting rejection of the Petitioner's claim of an expressed and direct conflict between this case and Hodges and Helton is Jackson v. State, 538 So.2d 533 (Fla. 5th DCA 1989). In Jackson, the majority opinion states that the Court's prior decision in Hodges held that Williams rule evidence is not admissible when it is solely relevant to prove consent vel non on the part of a rape victim. However, the Jackson majority holds that since the collateral crime was sufficiently similar to the charged crime, evidence of the collateral crime was admissible and relevant to show modus operandi, plan or scheme, and to rebut the disputed claim of sex for pay.

In sum, the cases involving the admissibility of collateral crime evidence in sexual battery cases, in which consent is the sole defense, can be easily reconciled. When there is sufficient similarity between the charged and collateral crime to show a plan, course of conduct or common scheme, the collateral crime evidence is admissible for these purposes. See Williams, Jackson and the case at bar. When there is insufficient similarity so that there is no showing of a plan, course of conduct or common scheme, the collateral crime evidence is inadmissible to disprove the claim of consent. See Hodges and Helton. Since there is clearly no

expressed and direct conflict between this case and Hodges and Helton, the request for discretionary review should be denied.

CONCLUSION

Based upon the foregoing reasons and citations of authority, the Respondent submits that this Court should deny discretionary review in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing was forwarded to May L. Cain, 1633 N.E. 19th Avenue, Suite 224, North Miami Beach, Florida 33162, on this the 30th day of March, 1992.

Paul Mendelson

PAUL MENDELSON
Assistant State Attorney